

United States
Circuit Court of Appeals

For the Ninth Circuit. 21

L. H. WOLF,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review an Order of the United States
Board of Tax Appeals.

FILED

JUN 16 1934

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

L. H. WOLF,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:

ROBERT N. MILLER, Esq.,
M. D. WILSON, Esq.,

For Comm'r.:

A. L. MURRAY, Esq.,
ALVA C. BAIRD, Esq.

DOCKET ENTRIES.

1932

Mar. 30—Petition received and filed. Taxpayer notified. (Fee paid)

“ 30—Copy of petition served on General Counsel.

Apr. 19—Answer filed by General Counsel.

“ 28—Copy of answer served on taxpayer. General Calendar.

Sept. 20—Hearing set Nov. 9, 1932.

“ 26—Motion to place on Circuit Calendar for hearing at Los Angeles, California, filed by taxpayer. 9/29/32 granted.

1933

Oct. 2-3—Hearing had before E. H. Van Fossan, Div. 9. Submitted. By agreement of counsel set for hearing Oct. 2, 1933. No hearing notice sent. Stipulation of facts filed. Briefs due Dec. 1, 1933. No exchange.

“ 21—Amended petition filed. 10/23/33 copy served.

1933

Oct. 12—Transcript of hearing of Oct. 2 & 3, 1933,
Long Beach, Cal. filed.

Nov. 29—Brief filed by taxpayer.

Dec. 1—Brief filed by General Counsel.

1934

Jan. 9—Memorandum opinion rendered, E. H.
Van Fossan, Div. 9. Decision will be
entered for respondent.

“ 11—Decision entered, E. H. Van Fossan,
Div. 9.

Apr. 2—Petition for review by U. S. Circuit Court
of Appeals (9) with assignments of error
filed by taxpayer.

“ 2—Proof of service filed.

May 15—Agreed statement of evidence lodged.

“ 15—Motion for transmission of original ex-
hibits filed by taxpayer. 5/17/34 granted.

“ 15—Praecipe filed—proof of service thereon.

“ 17—Agreed statement of evidence approved
and ordered filed. [1*]

*Page numbering appearing at the foot of page of original certified Transcript of Record.

United States Board of Tax Appeals
Docket No. 63589

L. H. WOLF,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named Petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, IT:AR:E-1 EEW-60D, dated February 1, 1932, and as a basis of his proceeding alleges as follows:

1. The Petitioner is an individual residing at 7840 Sunset Boulevard, Los Angeles, California.

2. The notice of deficiency, a copy of which is attached hereto and marked "Exhibit A", was mailed to the Petitioner on February 1, 1932.

3. The taxes in controversy are individual income taxes for the calendar year 1929 in the amount of \$1,249.44.

4. The determination of tax set forth in the said notice of deficiency is based upon the following error:

(a) The Respondent erred in recognizing a profit from the involuntary conversion of a parcel of taxpayer's [2] property.

5. The facts upon which the Petitioner relies as the basis of this proceeding are as follows:

(a) Taxpayer owned a lot in Hollywood, California, 383 feet long and 103 feet wide.

(b) In 1929 the City of Los Angeles opened up Ivar Avenue and condemned a diagonal strip across the center of Petitioner's property seventy (70) feet wide.

(c) The City of Los Angeles, by order of the Court, paid Petitioner, for improvements and severance damages, \$14,273, and the amount of \$23,549 for the land taken from Petitioner.

(d) The City of Los Angeles levied a special assessment on the two newly created parcels of property for the opening and widening work, of \$19,470.32 and \$19,243.28, respectively, making a total of \$38,713.60.

(e) Petitioner expended the entire proceeds from the award for buildings, severance and land, in the payment of the special assessment on the two newly created parcels.

(f) The Petitioner expended the proceeds of the property involuntarily converted, in the acquisition of other property similar or related in service or use to the property so converted.

(g) The gain, if any, therefore, should not be recognized.

WHEREFORE, Petitioner prays that the Board may hear this proceeding and find that the entire proceeds from the property [3] involuntarily converted was expended in the acquisition of other

property similar or related in service or use to the property so converted, and that any apparent profit should not be recognized for income tax purposes.

ROBERT N. MILLER

c/o Miller & Chevalier,
922 Southern Building,
Washington, D. C.

MELVIN D. WILSON

c/o Miller, Chevalier, Peeler & Wilson,
819 Title Insurance Building,
Los Angeles, California.

Counsel for Petitioner. [4]

State of California,
County of Los Angeles—ss.

L. H. WOLF, being duly sworn, says:

That he is the Petitioner above named; that he has read the foregoing Petition and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief, and those facts he believes to be true.

L. H. WOLF

Subscribed and sworn to before me this 25 day of March, 1932.

[Seal]

BESSIE M. CLEMENT

Notary Public in and for the County of Los Angeles, State of California. My Commission Expires March 18, 1934. [5]

"EXHIBIT A"

NP-2-28

TREASURY DEPARTMENT

Washington

Office of

Feb. 1, 1932

Commissioner of Internal Revenue

Address Reply to

Commissioner of Internal Revenue

and Refer to

Mr. L. H. Wolf,

7840 Sunset Boulevard,

Los Angeles, California.

Sir:

You are advised that the determination of your tax liability for the year(s) 1929, discloses a deficiency of \$1,249.44, as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your return (s) by permitting an early assessment of any deficiency and preventing the accumulation of interest

charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; WHEREAS IF NO AGREEMENT IS FILED, interest will accumulate to the date of assessment of the deficiency.

Respectfully,

DAVID BURNET,
Commissioner.

By J. C. WILMER
Deputy Commissioner.

Enclosures:

Statement

Form 882

Form 870 [6]

STATEMENT

IT:AR:E-1

EEW-60D

In re: Mr. L. H. Wolf,
7840 Sunset Boulevard,
Los Angeles, California

Tax Liability

Year	Tax Liability	Tax Assessed	Deficiency
1929	\$1,273.35	\$23.91	\$1,249.44

Further reference is made to your letter of December 29, 1931, in which you wish to cancel the agreement, form 870, forwarded to this office for the year 1929, and request that a sixty-day letter be issued.

In compliance with your request, a sixty-day letter is being issued.

The change in income is as follows:

Net income reported on return.....\$ 7,789.44

Add:

1. Profit from sales..... 18,349.00

Adjusted net income\$26,138.44

Computation of Tax

Adjusted net income\$26,138.44

Less:

Personal exemption 3,500.00

Income subject to normal tax.....\$22,638.44

Normal tax at $\frac{1}{2}\%$ on \$4,000.00.....\$ 20.00

Normal tax at 2% on \$4,000.00..... 80.00

Normal tax at 4% on \$14,638.44..... 585.54

Surtax on \$26,138.44 589.69

Total tax\$ 1,275.23

[7]

Less:

Earned income credit 1.88

Tax liability\$1,273.35

Tax assessed 23.91

Deficiency in tax\$1,249.44

Explanation of Change

1. The amount of \$18,349.00 represents profit from real estate condemned for street widening purposes. The computation is as follows:

Cost of land in 1920.....	\$20,200.00
Cost of drain installed.....	800.00
	<hr/>
Total cost	\$21,000.00
Award received for portion con- demned	\$23,549.00
Cost of portion condemned	
\$21,000.00 x 20%	4,200.00
	<hr/>
	\$19,349.00
Less attorney fees	1,000.00
	<hr/>
Taxable gain	\$18,349.00

Due to the fact that the statute of limitations will presently bar any assessment of additional tax against you for the year 1929, the Income Tax Unit will be unable to afford you an opportunity to discuss your case before mailing formal notice of its determination as provided by section 274 (a) of the Revenue Act of 1926 and/or section 272 (a) of the Revenue Act of 1928. It is, therefore, necessary at this time to issue this formal notice of deficiency.

[Endorsed]: United States Board of Tax Appeals. Filed March 30, 1932. [8]

[Title of Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition filed in this proceeding, admits and denies as follows:

1. Admits the allegations in paragraph 1 of the petition.

2. Admits the allegations in paragraph 2 of the petition.

3. Admits the allegations in paragraph 3 of the petition.

4. (a) Denies that the respondent's determination is based on error as alleged in subparagraph (a) of paragraph 4 of the petition.

5. Denies the material allegations of fact contained in subparagraphs (a) to (g) inclusive, of paragraph 5 of the petition.

Denies generally and specifically each and every allegation contained in the petition not hereinabove specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the Board re-determine the amount of the deficiency involved in this proceeding to be equal to the amount determined by the Commissioner, plus any additional amount which may arise from the correction of any errors that may have been committed by the Commissioner. Claim is hereby asserted for the increas-

ed deficiency, if any, resulting from such redetermination.

[Signed]

C. M. CHAREST
General Counsel,
Bureau of Internal Revenue.

Of Counsel:

J. H. YEATMAN,
Special Attorney,
Bureau of Internal Revenue.

4/18/32

[Endorsed]: United States Board of Tax Appeals. Filed Apr. 19, 1932. [9]

[Title of Court and Cause.]

AMENDED PETITION

Permission having been granted, the above-named Petitioner hereby files his Amended Petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, IT:AR:E-1 REW-60D, dated February 1, 1932, and as a basis of his proceeding alleges as follows:

1. The Petitioner is an individual residing at 7840 Sunset Boulevard, Los Angeles, California.
2. The notice of deficiency, a copy of which was attached to the original Petition and marked "Exhibit A," was mailed to the Petitioner on February 1, 1932.
3. The taxes in controversy are individual in-

come taxes for the calendar year 1929 in the amount of \$1,249.44.

4. The determination of tax set forth in the said notice of deficiency is based upon the following error: [10]

(a) The Respondent erred in recognizing a profit from the involuntary conversion of a parcel of taxpayer's property.

5. The facts upon which the Petitioner relies as the basis of this proceeding are as follows:

(a) The taxpayer, in 1921, acquired a lot 103 feet wide and 383 feet deep, facing on Cahuenga Avenue, located in Hollywood, California.

(b) The lot cost Petitioner \$21,000.00.

(c) Between 1920 and 1925, Petitioner constructed various buildings on said property.

(d) In 1929, the City of Los Angeles opened up Ivar Avenue and condemned a strip 70 feet wide running diagonally across the center of Petitioner's property. This strip represented 20 per cent of the area of Petitioner's property.

(e) By order of Court, Petitioner was awarded from the city of Los Angeles, the following amounts:

For damages to buildings	\$10,267.00
As severance damages to the balance of Petitioner's land	4,006.00
As an award for the land taken from Petitioner	23,549.00
Total	<u>\$37,822.00</u>

(f) The City of Los Angeles levied special assessments on the two newly created parcels of property for the opening and widening work, amounting to \$19,470.32 and \$19,243.28, respectively, making a total of \$38,713.60. [11]

(g) The City of Los Angeles credited the awards mentioned above, totaling \$37,822.00, against the special assessments, totaling \$38,713.60, and collected from Petitioner, in 1929, the difference of \$891.60.

(h) Thereafter, the City of Los Angeles levied, and the Petitioner paid, further special assessments on the two newly created parcels, in the amounts of \$1,317.20 and \$1,315.55, respectively, for paving, sidewalks, storm drain, etc., along Ivar Avenue, occasioned by the opening of said Avenue in 1929.

(i) Petitioner, in 1929, paid Attorney's fees in the sum of \$1,000, in connection with the condemnation and the awards and the special assessments.

(j) On account of the opening of Ivar Street, through Petitioner's land, he was required to demolish and remove a portion of his buildings, and to face the remaining buildings fronting on the said new streets. This work was done in 1929 and 1930 and cost Petitioner \$6,809.98.

(k) Petitioner did not, in 1929, sell his remaining parcels as described above.

(l) Petitioner did not, in receiving the

awards from the City of Los Angeles, recover his cost in the said property, consequently, no gain was realized.

(m) Petitioner expended the entire proceeds from the award for buildings, severance and land, in the payment of the special assessments on the two newly created [12] parcels. Petitioner expended the proceeds of the property involuntarily converted, in the acquisition of other property similar or related in service or use to the property so converted. The gain, if any, should not be recognized.

WHEREFORE, Petitioner prays that the Board may hear this proceeding and find that Petitioner did not, in 1929, recover the cost of this property converted, or that the entire proceeds from the property involuntarily converted were expended in the acquisition of other property similar or related in service or use to the property so converted, and that any apparent profit should not be recognized for income tax purposes.

ROBERT N. MILLER,

c/o Miller & Chevalier,
922 Southern Building,
Washington, D. C.

MELVIN D. WILSON,

c/o Miller, Chevalier, Peeler
& Wilson,

819 Title Insurance Building,
Los Angeles, California.

Counsel for Petitioner [13]

State of California

County of Los Angeles.—ss.

L. H. WOLF, being duly sworn, says:

That he is the Petitioner above-named; that he has read the foregoing Amended Petitioner and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief, and those facts he believes to be true.

L. H. WOLF

Subscribed and sworn to before me this 17 day of October, 1933.

[Seal]

MILDRED K. ROGERS

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: United States Board of Tax Appeals. Filed Oct. 21, 1933.

ANSWER TO AMENDED PETITION

(Read into record October 2, 1933)

* * * MR. MURRAY: I would like the record to show that I enter a general denial to that amended petition.

The MEMBER: It will so show. [14]

[Title of Court and Cause.]

1. Where, pursuant to condemnation proceedings, property is taken for public purposes, and an award is made for land and buildings so taken and severance damages, which award is paid by application against the assessment levied for benefits

accruing to remaining property, the proceeding constitutes a closed transaction which may result in taxable gain.

2. The construction by the city of a street through taxpayer's property, after condemnation proceedings, in connection with which taxpayer receives an award for property taken, does not of itself result in the acquisition of "property similar or related in service or use" within the meaning of section 112 (f) of the Revenue Act of 1928.

Melvin D. Wilson, Esq., for the petitioner.

Alva C. Baird, Esq., and A. L. Murray, Esq., for the respondent.

MEMORANDUM OPINION

VAN FOSSAN: A deficiency in the amount of \$1,249.44 for the year 1929 is here in issue. The proposed additional tax arises from the respondent's determination that the proceeds of an award received by taxpayer in connection with a land condemnation proceeding were taxable as income. Petitioner assigns this recognition of gain on the involuntary conversion of his property as error.

In 1920 petitioner acquired a parcel of property located in Hollywood, California, described as lot A, tract 2129, Map Book 24, page 68, Los Angeles County, California. The cost of such property was \$21,000.

Between 1920 and 1925 petitioner constructed various buildings on said property. The buildings covered the entire lot, except for a driveway through the property. A two-story brick building stood on

the front portion of the lot. The second story was built over the driveway. A smaller frame and stucco building was on the rear of the lot.

The property was 103 feet wide, fronting on Cahuenga Avenue, and 383 feet deep. [15]

In 1929 the city of Los Angeles, for the purpose of opening up Ivar Avenue, a public thoroughfare, condemned a strip 70 feet wide running diagonally across the approximate center of petitioner's land. This strip represented 20 percent of the total area of petitioner's property. By Ordinances No. 53214 (approved November 10, 1925), and No. 54065 (approved February 24, 1926), the city of Los Angeles created a special improvement district and the condemnation proceedings and improvements herein referred to were made pursuant thereto.

By order of court petitioner was awarded the following amounts:

(1) Award for building taken	\$10,267
(2) Award for the land taken from petitioner	23,549
(3) As severance damages for the bal- ance of land not taken.....	4,006
	<hr/>
Total.....	37,822

The city of Los Angeles levied special assessments for opening and widening work on the newly created street adjacent to parcels of petitioner's property in the amounts of \$19,470.32 and \$19,243.28 respectively, totaling \$38,713.60.

Petitioner paid the special assessments amounting to \$38,713.60 by applying the awards amounting to \$37,822 against assessments and paying the balance of \$891.60 in cash.

In 1931 the city of Los Angeles levied, and the petitioner paid, further special assessments on the two newly created parcels of \$1,317.20 and \$1,315.55 for the paving, sidewalks, storm drain, etc., along Ivar Avenue, occasioned by the opening of the avenue in 1929.

In 1929 petitioner paid \$1,000 attorney's fees in connection with the awards and special assessments.

It was determined by the respondent that the petitioner derived income of \$18,349 on the payment made for the land, computed as follows:

Award received for portion con-	
demned	\$23,549
Cost of portion condemned.....	4,200
	<hr/>
Difference	19,349
Less attorney fees.....	1,000
	<hr/>
Taxable gain.....	18,349

In respect of the buildings the petitioner sustained neither gain nor loss.

Petitioner did not sell, exchange, or otherwise dispose of the above described property in 1929 except as stated above.

On the basis of these facts taxpayer makes two contentions: First, that there was not a closed transaction giving rise to taxable gain, and, second, in

the alternative, the award was expended in the [16] acquisition of property similar or related in service or use to that taken, bringing the case under the statutory exception of section 112 (f) of the Revenue Act of 1928.

We are unable to find merit in either of petitioner's contentions. As to the first, it seems obvious that a closed transaction has occurred. Petitioner's property has been taken and he has parted with all interest. The fact that it was an involuntary proceeding brings no hope or comfort to taxpayer. It is gone beyond chance of return. Petitioner has been paid for the property by an official award by a court of competent jurisdiction. He has accepted the award by applying it against the assessment against the remainder of the property. Thus he has been paid for the property involuntarily sold to the city. The fact that there was an assessment for benefits does not alter the case. This relates to benefits accruing to the remaining property from the improvement. It also has been judicially fixed. In this situation we find every element of a closed transaction and a proper situation for imposition of tax on the gain derived.

Nor is there any substance in petitioner's second point—the conversion of the award into property similar or related in use. The simple fact is that petitioner did not expend the award in any such manner. The highly artificial argument advanced that he has converted the award into an interest or right in the new thoroughfare does not impress us

as worthy of extended consideration. Such an interpretation would make the statute a meaningless nullity. It would present imponderable questions of valuation. It would depart from all recognized canons of construction, among the most fundamental of which is that an unambiguous statute couched in words of ordinary comprehensible meaning should be interpreted in accordance with its plain terms and not distorted by artificial reasoning. Here the statute is plain in word and meaning and permits of no such construction or application as petitioner would give it.

We find the respondent's action to be in accord with law and the facts. John J. Bliss, 27 B.T.A. 803.

Decision will be entered for the respondent.

Entered January 9, 1934. [17]

United States Board of Tax Appeals
Washington

Docket No. 63589

L. H. WOLF,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Board, as set forth in its memorandum opinion entered January 9, 1934, it is

ORDERED AND DECIDED: That there is a deficiency of \$1,249.44 for the year 1929.

[Endorsed]: Entered Jan. 11 1934.

[Seal]

[Signed]

ERNEST H. VAN FOSSAN,

Member. [18]

In the United States Circuit Court of Appeals
For the Ninth Circuit

No.....

L. H. WOLF,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR A REVIEW OF THE DECISION OF THE UNITED STATES BOARD OF TAX APPEALS

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

L. H. WOLF, in support of this, his petition, filed in pursuance of Section 1001 of the Revenue Act of 1926 (44 Stat. 109), for the review of the decision of the United States Board of Tax Appeals, promulgated on the 9th day of January, 1934, and its judgment entered on the 11th day of January, 1934, in the case of L. H. Wolf, Petitioner, v. Com-

missioner of Internal Revenue, Respondent, Number 63, 589, under docket of said Board, wherein the Board redetermined a deficiency of income tax against the Petitioner for the calendar year 1929 in the amount of \$1,249.44, respectfully shows this Honorable Court as follows:

I.

STATEMENT OF THE NATURE OF THE CONTROVERSY. [19]

1. That on February 1, 1932, the Commissioner of Internal Revenue, in accordance with Section 272 of the Revenue Act of 1928, addressed a letter to the Petitioner proposing deficiencies in taxes for the taxable year 1929 in the amount of \$1,249.44.

2. That within sixty days from the date of the aforesaid deficiency letter, to-wit; on or about the 30th day of March, 1932, Petitioner duly filed with the United States Board of Tax Appeals, in pursuance of the provision of the Revenue Acts applicable thereto, his petition requesting the redetermination of the deficiency above referred to, and said petition was duly docketed with the said Board under Docket No 63,589. That on or about October 2, 1933, with the permission of the Board, the petitioned filed, with the said Board, an Amended Petition.

The facts, as alleged in the Amended Petition, as agreed to by Stipulation, or introduced into evidence without contradiction, are as follows:

Petitioner, in 1920, acquired a single parcel of property, 103 feet wide and 383 feet long, located

in Hollywood, California, described as Lot "A," Tract 2129, Map Book 24, Page 68. The lot cost \$21,000.

Between 1920 and 1925, Petitioner constructed various buildings on the property, at a total cost of \$75,000. The buildings covered the entire lot, except for a driveway through the center of the property.

In 1929, the City of Los Angeles, for the purpose of opening up Ivar Avenue, a public thoroughfare, condemned a right of way 70 feet wide, running diagonally across the approximate center of [20] Petitioner's land and buildings. The right of way covered 20 per cent of the total area of Petitioner's property. A special improvement district was created and the condemnation and improvements hereinafter mentioned were part of its work. Petitioner did not vote or petition for the creation of this district.

The City of Los Angeles, in 1929, levied special assessments against Petitioner's property for opening Ivar Avenue, in the amounts of \$19,470.32 and \$19,243.28, respectively, on the two newly created parcels on either side of Ivar Avenue. In 1931, the City of Los Angeles levied special assessments on the two newly created parcels, for paving, sidewalks, storm drain, etc., along Ivar Avenue, of \$1,317.20 and \$1,315.55, respectively. In 1929, Petitioner paid an Attorney \$1,000 to represent him in connection with said assessments and the award hereinafter mentioned. In 1929 and 1930, Peti-

tioner expended \$6,809.78 in the necessary demolition, alteration, and refacing of buildings along the right of way.

The total amount necessarily expended by Petitioner in connection with this condemnation was \$49,156.13.

By order of Court, Petitioner was awarded \$10,267 for buildings taken, \$23,549 for the right of way taken, and \$4,006 as severance damages for the balance of the land, or a total of \$37,822.

Petitioner did not receive these awards in cash but they were applied as a credit on the assessments.

After the condemnation was completed and all the above assessments and amounts had been paid, Petitioner had a further invest- [21]ment in his property of \$11,274.13, and had the exclusive use of 20 per cent less land and had 20 per cent less buildings.

The Respondent computed a profit on the transaction as follows:

Award received for land taken.....	\$23,549.00
Cost of land taken (20% of \$21,000)	4,200.00
	<hr/>
Difference	\$19,349.00
Less Attorney's fees	1,000.00
	<hr/>
Taxable gain	\$18,349.00

Petitioner did not sell, exchange, or otherwise dispose of the above described property, in 1929, except as stated above.

Petitioner sustained neither gain nor loss with respect to the buildings.

The portion of Petitioner's property affected by the opening of Ivar Avenue was, both before and after such opening, in a light manufacturing district. The character of the business of Petitioner's tenants was the same after the opening of Ivar Avenue as it was before.

The community around Petitioner's property has not been improved or built up since the opening of Ivar Avenue.

The opening of Ivar Avenue so disrupted Petitioner's property that many of his tenants moved out, and a substantial portion of his property was vacant for over a year.

The rental income from the front portion of Petitioner's property, which was not affected by the opening of Ivar Avenue, was the same after the opening of Ivar Avenue as it was before.

The rental income from the rear portion of Petitioner's pro- [22] perty was reduced from \$650 per month to \$265 per month by the opening of Ivar Avenue. The opening of Ivar Avenue left the floor of Petitioner's buildings about 24 inches above the street level and 18 inches above the sidewalk level.

The Petitioner contended that he had not realized any taxable income out of this transaction, and that the Respondent had erred in increasing his 1929 income by \$18,349, or any amount on account of this transaction.

3. Within the time allowed by law, the Commissioner of Internal Revenue filed, with said Board, his Answer in said cause, Docket No. 63,589, by which were raised the issues determined by said decision of the United States Board of Tax Appeals.

4. The cause, being at issue, duly came on for hearing on the 2nd day of October, 1933, at which time the parties filed a written Stipulation, and submitted other evidence to the Board upon oral Stipulation; the Petitioner introduced without contradiction, other testimony by a competent witness. Thereafter, on January 9, 1934, the Board rendered its Memorandum Opinion, in which it stated the facts covered by the written Stipulation, together with an opinion in which it held that a taxable profit, as computed by Respondent, was realized by the Petitioner from the circumstances related above. On January 11, 1934, the Board entered its final order of redetermination approving the deficiency as determined by the Respondent in the amount of \$1,249.44, for 1929.

II.

DESIGNATION OF COURT OF REVIEW.

[23]

The Petitioner, being aggrieved by the said findings of fact, opinion, decision and order, and being an inhabitant of the State of California, County of Los Angeles, City of Los Angeles, and within the Ninth Circuit, desires a review thereof by the United States Circuit Court of Appeals for the Ninth Circuit, within which Circuit is located the office of the Collector of Internal Revenue to whom

Petitioner made his income tax return for the calendar year 1929, involved herein.

III.

ASSIGNMENTS OF ERROR.

The Petitioner, as a basis for review, makes the following assignments of error:

1. The Board of Tax Appeals erred as a matter of law in ordering and deciding that there was a deficiency for the year 1929.

2. The Board of Tax Appeals erred as a matter of law in deciding that Petitioner realized any taxable income in 1929 arising out of the involuntary condemnation of his property.

3. The Board of Tax Appeals erred in deciding that there was a closed transaction in 1929.

4. The Board of Tax Appeals erred in finding that Petitioner derived cash or anything else from his property in 1929, as a result of its involuntary conversion.

5. The Board of Tax Appeals erred in failing to find that Petitioner's property was involuntarily converted into other property similar or related in service or use to the property so converted. [24]

6. The Board of Tax Appeals erred in failing to find that Petitioner reinvested the proceeds of the involuntary conversion of his property in the acquisition of other property similar or related in service or use to the property so converted.

7. The Board of Tax Appeals erred in failing to find that the rental value of Petitioner's property was decreased by the transaction involved.

8. The Board of Tax Appeals erred in failing to find that the character of Petitioner's property was not improved by the opening of Ivar Avenue through Petitioner's property.

9. The Board of Tax Appeals erred in failing to find that the sidewalk on Ivar Avenue was graded and paved about two feet below the level of the floors in Petitioner's buildings.

10. The Board of Tax Appeals erred in its decision and determination of a deficiency of \$1,249.44 for the taxable year 1929.

11. The Board erred in rendering decision for the Respondent.

WHEREFORE, your Petitioner prays that this Honorable Court may review said findings, decision, opinion, and order, and reverse and set aside the same; that it direct the United States Board of Tax Appeals to determine that no deficiency is due by the Petitioner in this proceeding; and for such other and further relief [25] as the Court may deem meet and proper in the premises.

MELVIN D. WILSON

819 Title Insurance Building,
Los Angeles, California.

HOMER HENDRICKS,

922 Southern Building,
Washington, D. C.

Counsel for Petitioner.

Of Counsel:

MILLER & CHEVALIER,

922 Southern Building,

Washington, D. C. [26]

State of California
County of Los Angeles.—ss.

MELVIN D. WILSON, being duly sworn, deposes and says:

That he is an Attorney-at-Law, authorized to practice before the United States Board of Tax Appeals, and the United States Circuit Court of Appeals for the Ninth Circuit, and has his office at 819 Title Insurance Building, Los Angeles, California.

That he was the Attorney of record for the Petitioner named in the foregoing *Petitioner*, before the United States Board of Tax Appeals.

That he is familiar with the facts stated in the foregoing Petition and alleges them to be true.

Said Petition is filed in good faith.

MELVIN D. WILSON,

Subscribed and sworn to before me this 28 day of March, 1934.

MILDRED K. ROGERS

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: United States Board of Tax Appeals. Filed April 2, 1934. [27]

United States Board of Tax Appeals

Docket No. 63,589

L. H. WOLF,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

STATEMENT OF EVIDENCE

This cause came on for hearing before Hon. Ernest H. Van Fossan, Member of the United States Board of Tax Appeals, on October 2nd and 3rd, 1933, at Long Beach, California. Melvin D. Wilson, Esq., appeared for the Petitioner, and Alva C. Baird, Esq., and A. L. Murray, Esq., Special Attorneys, Bureau of Internal Revenue, appeared for Respondent.

The parties filed a written Stipulation which read as follows:

“It is hereby stipulated, between the parties hereto, through their respective counsel, that the above entitled cause may be submitted to the United States Board of Tax Appeals on the facts hereinafter set forth.

I.

“In 1920, Petitioner acquired a parcel of property located in Hollywood, California, described as Lot “A,” Tract 2129, Map Book 24, Page 68, Los Angeles County, California. That the cost [28]

of such property was Twenty-one Thousand Dollars (\$21,000.00).

II.

“Between 1920 and 1925, Petitioner constructed various buildings on said property. The said buildings covered the entire lot, except for a driveway through the property. A two story brick building stood on the front portion of the lot. The second story was built over the driveway. A smaller frame and stucco building was on the rear of the lot.

III.

“The property was 103 feet wide, fronting on Cahuenga Avenue and 383 feet deep.

IV.

“In 1929, the City of Los Angeles, for the purpose of opening up Ivar Avenue, a public thoroughfare, condemned a strip 70 feet wide running diagonally across the approximate center of Petitioner’s land. This strip represented 20 per cent of the total area of Petitioner’s property. By Ordinances No. 53214 (approved November 10, 1925), and No. 54065 (approved February 24, 1926), the City of Los Angeles created a special improvement district and the condemnation proceedings and improvements herein referred to, were made pursuant thereto.

V.

“By order of Court, Petitioner was awarded the following amounts:

“(1) Award for buildings taken.....	\$10,267.00
(2) Award for the land taken from Petitioner	23,549.00
(3) As severance damages for the balance of land not taken.....	4,006.00
	<hr/>
Total.....	\$37,822.00

[29]

VI.

“The City of Los Angeles levied special assessments for opening and widening work on the newly created street adjacent to parcels of Petitioner’s property in the amounts of \$19,470.32 and \$19,243.28 respectively, totaling \$38,713.60.

VII.

“Petitioner paid the special assessments amounting to \$38,713.60, by applying the awards amounting to \$37,822.00, against assessments and paying the balance of \$891.60 in cash. Copies of the Special Assessments are attached hereto and marked Exhibits 1 and 2.

VIII.

“In 1931, the City of Los Angeles levied, and the Petitioner paid further special assessments on the two newly created parcels of \$1,317.20, and \$1,315.55 for the paving, sidewalks, storm drain, etc., along Ivar Avenue, occasioned by the opening of said Avenue in 1929. Copies of the special assessments are attached hereto and marked Exhibits 3 and 4.

IX.

“In 1929, Petitioner paid \$1,000.00 Attorney’s fees in connection with the said awards and special assessments.

X.

“It was determined by the Respondent that the Petitioner derived income of \$18,349.00 on the payment made for the land computed as follows: [30]

Award received for portion con-	
demned	\$23,549.00
Cost of portion condemned.....	4,200.00
	<hr/>
Difference	\$19,349.00
Less Attorney fees	1,000.00
	<hr/>
Taxable gain	\$18,349.00

XI.

“In respect of the buildings the Petitioner sustained neither gain nor loss.

XII.

“Petitioner did not sell, exchange or otherwise dispose of the above described property, in 1929, except as stated above.

XIII.

“Further evidence may be offered by either party hereto. [31]

EXHIBIT 1

Original

"BUREAU OF ASSESSMENTS

of the City of Los Angeles

Room 34, City Hall

L. A. Wolf,

7840 Sunset Blvd.

Assessment Nos. 436 benefits for Opening and Widening of CAHUENGA AVE. and Other Streets Highland Ave. to Melrose Ave.

from..... to

Description—Lot E. part of Lot A and part of Lot 12 and part of Ivar Ave. Vacated.

2129

No. 82082

This receipt not valid

unless it is stamped

"Paid" in this space.

Board of Public Works

PAID

Mar. 20, 1929

H.L.F.

Cashier

Bureau of Assessments

Assessment\$19,470.32

Penalty
.....Advertising
.....

 Total.....\$19,470.32

Less Offset:

S. J. No. 151..... 18,578.72

 Net Cash.....\$ 891.60

List your property with the City Clerk, Room 6, City Hall, then you will be notified when Special Assessments become due. [32]

EXHIBIT 2

Original

“BUREAU OF ASSESSMENTS
of the City of Los Angeles
Room 34, City Hall

L. A. Wolf,
7840 Sunset Blvd.

Assessment Nos. 398 benefits for Opening and
Widening of CAHUENGA AVE. and Other Streets
Highland Ave. to Melrose Ave.

from..... to

Description—Lot. W. part of Lot A & part of
Lots 5 and 12

2129

No. 82044

This Receipt not valid
unless it is stamped
“Paid” in this space.
Board of Public Works

PAID

Mar 20, 1929

H.L.F.

Cashier

Bureau of Assessment

Assessment	\$19,243.28
Penalty
Advertising
<hr/>	
Total.....	\$19243.28
Less Offset:	
S. J. No. 151.....	19,243.28
<hr/>	
Net Cash.....	None

List your property with the City Clerk, Room 6, City Hall, then you will be notified when Special Assessments become due. [33]

EXHIBIT 3

Los Angeles, Cal., March 13, 1931.

BILL FOR STREET ASSESSMENT

In City of Los Angeles, California.

“Mr. Louis A. Wolf
7840 Sunset Blvd.,
Hollywood, Calif.

Payable to
DISTRICT BOND COMPANY
Suite 603 Title Insurance Building
433 South Spring Street
Los Angeles, Cal.

This bill covers assessment against the property listed for improvement designated below. Payment must be made at the above office before expiration date, otherwise assessment becomes subject to terms of law as shown on reverse side of this bill. If

you are not the owner of the property described, or acting on behalf of the owner, kindly return the bill to us.

Assmt. No.	Lot	Block	Tract	Amount
248	That portion of Lot A, Tract No 2129 M.B. 24, Page 68, lying Ely. of Ivar Avenue			\$1,317.20

Apr 13 1931

If immediate receipt is desired, make payment with cash, certified check or cashier's check.

For Improve- (Cahuenga Blvd.) Recorded (Interest
ment of (& Yucca Street) in Book 179 (to
(Improvement) Page 245 (Date.....
(District - Pav-) (Total \$.....
(ing, Sidewalks,) (Storm Drain, etc.)

Important:

If you have not already done so, you should list your property, if in the City of Los Angeles, with the City Clerk, City Hall; or if in the County of Los Angeles, with the County Surveyor, 5th floor, Klinker Bldg. Give full legal description, together with your name and address, so that you may be notified of any special assessments against your property.

April 13, 1931

PAID

DISTRICT BOND CO.

By Ruth Hurley

If remitting by mail please enclose this bill.

EXHIBIT 4

“Los Angeles, Cal., Mar 13 1931
 BILL FOR STREET ASSESSMENT
 In City of Los Angeles, California.

Mr. Louis A. Wolf,
 7840 Sunset Blvd.,
 Hollywood, Calif.

Payable to
 DISTRICT BOND COMPANY
 Suite 603 Title Insurance Building
 433 South Spring Street
 Los Angeles, Cal.

This bill covers assesment against the property listed for improvement designated below. Payment must be made at the above office before expiration date, otherwise assessment becomes subject to terms of law as shown on reverse side of this bill. If you are not the owner of the property described, or acting on behalf of the owner, kindly return the bill to us.

Assmt. No.	Lot	Block	Tract	Amount
146	That part of Lot A, lying W'ly 2129 of Ivar Avenue. M.B. 24-P. 68			\$1,315.55

DUPLICATE BILL Apr 13 1931

If immediate Receipt is Desired, Make Payment with Cash, Certified Check or Cashier's Check.

For Improve-	(Cahuenga Blvd.)	Recorded in	(Interest
ment of	(& Yucca Street)	Book	(to
	(Improvement)	Page	(Date.....
	(District - Pav-)		(Total \$.....
	(ing, Sidewalks,)		
	(Storm Drain, etc.)		

Important:

If you have not already done so, you should list your property, if in the City of Los Angeles, with the City Clerk, City Hall; or if in the County of Los Angeles, with the County Surveyor, 5th floor. Klinker Bldg. Give full legal description, together with your name and address, so that you may be notified of any special assessments against your property.

April 13, 1931

PAID

DISTRICT BOND CO.

By Ruth Hurley

If remitting by mail please enclose this bill.

Last day to pay—Apr. 13 1931." [35]

—
The parties entered into an oral stipulation, before the Board, as follows: "The Petitioner ex-

pended in 1929 and 1930, \$6,809.98 in the necessary demolition, alteration, and refacing of buildings standing on the property involved in this proceeding. The \$10,267 mentioned in the written Stipulation, as being for buildings taken, was among other things, intended to cover this work.”

The Board, upon motion of Petitioner, permitted Petitioner to file an Amended Petition, with the understanding that all the material allegations thereof were to be considered as denied by Respondent.

The parties also stipulated that the Board might take judicial notice of the ordinances of the City of Los Angeles, under which the condemnation proceeding in question was instituted, and of any part of this proceeding, that is, the complaint and the judgment or award or any part of the official records of this condemnation proceeding; that any parts of the ordinances and/or the condemnation proceeding in question as set out in the briefs of the parties could be considered in evidence in the case.

In addition, L. H. Wolf, the Petitioner, was called as a witness in his own behalf, and, having been first duly sworn, was examined and testified as follows:

TESTIMONY OF L. H. WOLF
for Petitioner

My name is L. H. Wolf. I am the Petitioner in this case.

I own the property in Hollywood, California, described as Lot “A,” Tract 2129, Map Book 24,

Page 68. I acquired the property in 1920, and made improvements thereon, totaling approximately \$75,000, subsequently. [36]

The lower floor of the building in the front of the lot was occupied by stores, the second story by a hotel; the buildings in the rear were occupied by an automobile repair shop, a nickel plating works, a laundry loading station, and a storage room.

The portion of my property affected by the opening of Ivar Avenue was, both before and after such opening, in a light manufacturing district. The community has not been improved or built up since the opening of Ivar Avenue.

I did not vote or petition for the creation of the special assessment district which was the basis for the opening of Ivar Avenue through my property.

The foregoing evidence is all of the material evidence adduced at the hearing before the United States Board of Tax Appeals, and the same is approved by counsel for Petitioner.

MELVIN D. WILSON (Signed)
819 Title Insurance Building,
Los Angeles, California.

HOMER HENDRICKS (Signed)
920 Southern Bldg.,
Washington, D. C.

Counsel for Petitioner on Review.

The foregoing is all of the material evidence adduced at the hearing before the United States Board

of Tax Appeals, and the same is approved by the undersigned as Attorney for the Respondent on review, the Commission of Internal Revenue,

ROBERT H. JACKSON (Signed)
 General Counsel,
 Bureau of Internal Revenue,
 Washington, D. C.

[Endorsed]: Approved and ordered filed this 17th day of May, 1934.

(Signed) ERNEST H. VAN FOSSAN,

[Endorsed]: United States Board of Tax Appeals. Filed May 17, 1934. [37]

[Title of Cause.]

MOTION FOR TRANSMISSION OF THE
 ORIGINAL EXHIBITS.

On Appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

(B.T.A. Docket No. 63,589)

To the United States Circuit Court of Appeals for the Ninth Circuit:

To the United States Board of Tax Appeals:

Now comes the petitioner, by his attorneys, and respectfully shows—

(1) That the final decision in the above-entitled cause was rendered on January 11, 1934, determining a deficiency in income taxes for the calendar year 1929 in the amount of \$1,249.44.

(2) That a petition for review to the United States Circuit Court of Appeals for the Ninth Circuit was filed and served on April 2, 1934, and that the praecipe for the record will be filed and served in the near future, and that the Statement of Evidence is being settled.

(3) Exhibit 5 is a blue print map entitled "Layout of L. H. Wolf Buildings, showing changes caused by cutting thru of Ivar Street."

Exhibit 6 is a blue print map of the district.

Exhibit 7 consists of printed maps showing "land to be condemned," etc. [38]

All the foregoing exhibits were received in evidence at the hearing.

The said exhibits are too large for inclusion in the record, cannot be summarized, and are of importance in aiding the Appellate Court to obtain a full understanding of the facts, and it is, therefore, necessary and proper that said exhibits be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit for inspection by that Court upon its review of these proceedings.

(4) This motion is made pursuant to Rule 34 and Rule 38 (6) of the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

WHEREFORE, the petitioner prays that this Honorable Board may transmit the said Exhibits 5, 6 and 7 to the United States Circuit Court of Appeals for the Ninth Circuit for the inspection

by that Court upon review of these proceedings.

MELVIN D. WILSON (Signed)

819 Title Insurance Bldg.,

Los Angeles, California.

HOMER HENDRICKS (Signed)

920 Southern Bldg,

Washington, D. C.

Attorneys for Petitioner.

No objection

ROBERT H. JACKSON

[Endorsed]: Granted May 17, 1934.

(Signed) ERNEST H. VAN FOSSAN,

Member U. S. Board of Tax Appeals

[Endorsed]: United States Board of Tax Appeals. Filed May 15, 1934. [39]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD
ON APPEAL

TO: The Clerk of the United States Board of
Tax Appeals:

Please prepare and issue a certified transcript of record in the above entitled cause on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, consisting of the following documents.

- (1) The docket entries of proceedings before the United States Board of Tax Appeals in the case above entitled.

- (2) Pleadings before the Board, as follows:
 - (a) Petition.
 - (b) Answer of Respondent.
 - (c) Amended Petition.
- (3) Opinion, and decision of the Board. [40]
- (4) Petition for Review
- (5) Statement of the evidence agreed upon, including exhibits.
- (6) Motion for Transmission of the Original exhibits.
- (7) This Praeceptum.

The foregoing to be prepared, certified, and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

MELVIN D. WILSON (Sgd.)
819 Title Insurance Bldg.,
Los Angeles, California
HOMER HENDRICKS (Sgd.)
920 Southern Bldg.,
Washington, D. C.
Counsel for Petitioner.

Dated: May, 1934.

Service of the foregoing Praeceptum for Transcript of Record on Appeal is hereby accepted this 15th day of May, 1934.

ROBERT H. JACKSON (Sgd.)
General Counsel,
Bureau of Internal Revenue,
Washington, D. C.

[Endorsed]: United States Board of Tax Appeals. Filed May 15, 1934. [41]

[Title of Court and Cause.]

CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 41, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeceptum in the appeal as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 24th day of May, 1934.

[Seal]

B. D. GAMBLE,

Clerk,

United States Board of Tax Appeal.

[Endorsed]: No. 7504. United States Circuit Court of Appeals for the Ninth Circuit. L. H. Wolf, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed May 29, 1934.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

